IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 841 OF 2006

IN

MISC. PETITION NO. 27 OF 2004

IN

PETITION NO. 657 OF 1982

Dr. Behram Meherwanji Sethna. ... Appellant.

Versus

Mrs.Silloo Dara Zaiwalla & Anr..... Respondents.

Mr.Uday Warunjikar for the Appellant.

Mr.V.C.Kotwal a/w Mr. B.R.Zaiwalla i/by M/s.Zaiwalla & Co., for the Respondents.

CORAM : R. M. LODHA, and S. A. BOBDE, JJ.

DATED : 29TH NOVEMBER, 2006.

P.C.:

We heard Mr. Uday Warunjikar, learned Counsel for the appellant and Mr. V.C.Kotwal, learned Senior Counsel for the respondents.

2. The appellant filed Misc. Petition on 19th December, 2003 praying therein that the respondents be directed to furnish true, correct and complete inventory of the accounts of the property and credits

of the deceased and to divide and demarcate the share of the petitioner in the office premises at Bansilal Mansion and also restrain the respondents from transferring / disposing of any assets. It is not in dispute that pursuant to this petition the respondents (executors) filed inventory and accounts of the property of the deceased.

3. The petitioner / appellant also filed reply pointing out the discrepancies in the accounts.

4. By the order dated 10th March, 2005, the learned Single Judge directed the Prothonotary to examine the inventory and accounts in the light of the discrepancies pointed out by the appellant in his reply and submit report whether the inventory and accounts filed by the respondents were full and true estimate of all the properties of the deceased in possession of the executors.

5. In compliance of the order dated 10th March, 2005, the Prothonotary (Commissioner) examined the inventory and accounts and certified them.

6. In the light of the accounts and inventory having been certified by the Commissioner and the judgment of this Court in the case of Wadilal Chunilal v/s

Murlidhar Girdharlal Shah (1970 BLR 723), the learned Single Judge by the order dated 6th July, 2006 disposed of the petition, giving rise to the present appeal.

7. The Counsel for the appellant submitted that not only the accounts were not submitted by the executors in time and nothing was done for about 17 years, but also the accounts and inventory submitted by the executors do not reflect the correct affairs. He invited our attention to Sections 263, 301, 302 and 317 of the Indian Succession Act, 1925 and submitted that the learned Single Judge seriously erred in not taking appropriate action against the executors and in disposing of the petition.

8. Section 263 of the Indian Succession Act provides for revocation of probate or letters of administration or annulment thereof for just cause. That the appellant is one of the executors is not in dispute. The petition, that has been made by the appellant, is not for revocation or annulment of the probate. He does not even say so before us. Section 263 has, therefore, no application.

9. Section 301 of the Indian Succession Act provides for removal of administrator or executor and

provisions for succession. That is not the prayer by the appellant in the miscellaneous petition. Section 301, therefore, cannot be applied.

10. Under Section 302 of the Indian Succession Act, the High Court having granted probate or letters of administration in respect of the estate of the deceased, may give direction to executor or administrator (special or general), on the application, with regard to the estate or the administration thereof. Upon filing the miscellaneous petition by the appellant, the executors submitted accounts and inventory, to which reply was filed by the appellant pointing out certain discrepancies. Keeping in view the discrepancies pointed out by the appellant, the learned Single Judge of this Court appointed Prothonotary as Commissioner to examine the accounts and the inventory submitted by the executors, particularly, in the light of the discrepancies shown by the appellant. That was done and the Commissioner has certified the accounts and the inventory submitted by the executors. Obviously, thereafter no further direction was necessary as the accounts and the inventory submitted by the executors were not found to suffer from the discrepancies as pointed out by the appellant. In the facts and circumstances of the case, therefore, nothing further was required to be

done under Section 302 of the Indian Succession Act.

11. The fact that the executors submitted the accounts and inventory pursuant to the petition filed by the appellant and that the inventory and the accounts have been certified by the Commissioner appointed by the Court, but for the delay, no fault can be found in the conduct of the executors. The accounts and the inventory having been filed, we are of the view that even the delay in filing the inventory and accounts pales into insignificance.

12. All in all we find that none of the provisions cited by the Counsel for the appellant require any further action in the matter and therefore the disposal of the miscellaneous petition by the learned Single Judge of this Court cannot be faulted.

13. Accordingly, the appeal does not deserve to be admitted and is dismissed in limine.

Sd/-

(R. M. LODHA, J.)

Sd/-

(S. A. BOBDE, J.)